

**U.S. CUSTOMS SERVICE
OFFICE OF STRATEGIC TRADE
REGULATORY AUDIT DIVISION**

AUTHORITY TO AUDIT

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AUTHORITY TO AUDIT

GENERAL AUTHORITY

19 USC 1508 Recordkeeping

(a) Requirements.--Any--

- (1) owner, importer, consignee, importer of record, entry filer, or other party who--
 - (A) imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or
 - (B) knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;
- (2) agent of any party described in paragraph (1); or
- (3) person whose activities require the filing of a declaration or entry, or both; shall make, keep, and render for examination and inspection records (which for purposes of this section include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data) which--
 - (A) pertain to any such activity, or to the information contained in the records required by this Act in connection with any such activity; and
 - (B) are normally kept in the ordinary course of business; and

(b) Exportations to Free Trade Countries.--

- (1) Definitions.--As used in this subsection--
 - (A) The term 'associated records' means, in regard to an exported good under paragraph (2), records associated with--
 - (i) the purchase of, cost of, value of, and payment for, the

good;

(ii) the purchase of, cost of, value of, and payment for, all material, including indirect materials, used in the production of the good; and

(iii) the production of the good.

For purposes of this subparagraph, the terms "indirect material", "material", "preferential tariff treatment", "used", and "value" have the respective meanings given them in articles 415 and 514 of the North American Free Trade Agreement.

(B) The term 'NAFTA Certificate of Origin' means the certification, established under article 501 of the North American Free Trade Agreement, that a good qualifies as an originating good under such Agreement.

(2) Exports to NAFTA countries.--

(A) In general. Any person who completes and signs a NAFTA Certificate of Origin for a good for which preferential treatment under the North American Free Trade Agreement is claimed shall make, keep, and render for examination and inspection all records relating to the origin of the good (including the Certificate or copies thereof) and the associated records.

(B) Claims for certain waivers, reductions, or refunds of duties or for credit against bonds.--

(i) In general.--Any person that claims with respect to an article--

(I) a waiver or reduction of duty under the last paragraph of section 311 (19 USC 1311), section 312 (b) (1) or (4) (19 USC 1311 (b) (1) or (4)), section 562(2) (19 USC 1562 (2)), or the last proviso to section 3(a) of the Foreign Trade Zones Act (19 USC 81c (a));

(II) a credit against a bond under section 312(d) (19 USC 1312 (d)); or

- (III) a refund, waiver, or reduction of duty under section 313 (n)(2) or (o)(1) (19 USC 1313 (n)(2) or (o) (1)); must disclose to the Customs Service the information described in clause (ii).
- (ii) Information required.--Within 30 days after making a claim described in clause (I) with respect to an article, the person making the claim must disclose to the Customs Service whether that person has prepared, or has knowledge that another person has prepared, a NAFTA Certificate of Origin for the article. If after such 30-day period the person making the claim either--
 - (I) prepares a NAFTA Certificate of Origin for the article; or
 - (II) learns of the existence of such a Certificate for the article; that person, within 30 days after the occurrence described in subclause (I) or (II), must disclose the occurrence to the Customs Service.
- (iii) Action on claim.--If the Customs Service determines that a NAFTA Certificate of Origin has been prepared with respect to an article for which a claim described in clause (I) is made, the Customs Service may make such adjustments regarding the previous customs treatment of the article as may be warranted.
- (3) Exports under the Canadian agreement.--Any person who exports, or who knowingly causes to be exported, any merchandise to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada shall make, keep, and render for examination and inspection such records (including certifications of origin or copies thereof) which pertain to the exportations.
- (c) **Period of Time.** The records required by subsections (a) and (b) shall be kept for such periods of time as the Secretary shall prescribe; except that--
 - (1) no period of time for the retention of the records required under subsection (a) or (b)(3) may exceed 5 years from the date of entry, filing of reconciliation or exportation, as appropriate;

- (2) the period of time for the retention of the records required under subsection (b)(2) shall be at least 5 years from the date of signature of the NAFTA Certificate of Origin; and
- (3) records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.

(d) Limitation. For the purposes of this section and section 509 (19 USC 1509), a person ordering merchandise from an importer in a domestic transaction does not knowingly cause merchandise to be imported unless--

- (1) the terms and conditions of the importation are controlled by the person placing the order; or
- (2) technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with knowledge that they will be used in the manufacture or production of the imported merchandise.

(e) Subsection (b) Penalties.--

- (1) Relating to NAFTA exports. Any person who fails to retain records required by paragraph (2) of subsection (b) or the regulations issued to implement that paragraph shall be liable for--
 - (A) a civil penalty not to exceed \$10,000; or
 - (B) the general recordkeeping penalty that applies under the customs laws; whichever penalty is higher.
- (2) Relating to Canadian agreement exports. Any person who fails to retain the records required by paragraph (3) of subsection (b) or the regulations issued to implement that paragraph shall be liable for a civil penalty not to exceed \$10,000.

19 USC 1509 Examination of books and witnesses

(a) Authority. In any investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duty, fees and taxes due or duties and fees and taxes which may be due the United States, for determining liability for fines and penalties, or for insuring compliance with the laws of the United States administered by the United States Customs Service, the Secretary

(but no delegate of the Secretary below the rank of district director or special agent in charge) may--

- (1) examine, or cause to be examined, upon reasonable notice, any record (which for purposes of this section, includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry, except that--
 - (A) if such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry) it shall be provided to the Customs Service within a reasonable time after demand for its production is made, taking into consideration the number, type, and age of the item demanded; and
 - (B) if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty under subsection (g);
- (2) summon, upon reasonable notice--
 - (A) the person who--
 - (i) imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,
 - (ii) exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) or to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada,
 - (iii) transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage, or
 - (iv) filed a declaration, entry, or drawback claim with the Customs Service;

- (B) any officer, employee, or agent of any person described in subparagraph (A);
- (C) any person having possession, custody or care of records relating to the importation or other activity described in subparagraph (A); or
- (D) any other person he may deem proper;

to appear before the appropriate customs officer at the time and place within the customs territory of the United States specified in the summons (except that no witness may be required to appear at any place more than one hundred miles distant from the place where he was served with the summons), to produce records, as defined in subsection (d)(1)(A) of this section and to give such testimony, under oath, as may be relevant to such investigation or inquiry; and

- (3) take, or cause to be taken, such testimony of the person concerned, under oath, as may be relevant to such investigation or inquiry.

(b) Regulatory Audit Procedures.--

- (1) In conducting a regulatory audit under this section (which does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone), the Customs Service auditor shall provide the person being audited, in advance of the audit, with a reasonable estimate of the time to be required for the audit. If in the course of an audit it becomes apparent that additional time will be required, the Customs Service auditor shall immediately provide a further estimate of such additional time.
- (2) Before commencing an audit, the Customs Service auditor shall inform the party to be audited of his right to an entry conference at which time the purpose will be explained and an estimated termination date set. Upon completion of on-site audit activities, the Customs Service auditor shall schedule a closing conference to explain the preliminary results of the audit.
- (3) Except as provided in paragraph (5), if the estimated or actual termination date for an audit passes without the Customs Service auditor providing a closing conference to explain the results of the audit, the person being audited may petition in writing for such a conference to the appropriate officer designated pursuant to regulations, who, upon receipt of such a request, shall provide for such a conference to be held within 15 days after

the date of receipt.

- (4) Except as provided in paragraph (5), the Customs Service auditor shall complete the formal written audit report within 90 days following the closing conference unless the appropriate regional commissioner provides written notice to the person being audited of the reason for any delay and the anticipated completion date. After application of any exemption contained in section 552 of title 5, United States Code, a copy of the formal written audit report shall be sent to the person audited no later than 30 days following completion of the report.
- (5) Paragraphs (3) and (4) shall not apply after the Customs Service commences a formal investigation with respect to the issue involved.

(c) Service of summons. A summons issued pursuant to this section may be served by any person designated in the summons to serve it. Service upon a natural person may be made by personal delivery of the summons to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the summons to an officer, or managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The certificate of service signed by the person serving the summons is prima facie evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of records, such records shall be described in the summons with reasonable specificity.

(d) Special procedures for third-party summonses.

- (1) For purposes of this subsection--
 - (A) The term "records" includes those--
 - (i) required to be kept under section 508 (19 USC 1508); or
 - (ii) regarding which there is probable cause to believe that they pertain to merchandise the importation of which into the United States is prohibited.
 - (B) The term "summons" means any summons issued under subsection (a) of this section which requires the production of records or the giving of testimony relating to records. Such term does not mean any summons issued to aid in the collection of the liability of any person against whom an assessment has been made or judgment rendered.

- (C) The term "third-party recordkeeper" means--
 - (i) any customhouse broker, unless such customhouse broker is the importer of record on an entry
 - (ii) any attorney; and
 - (iii) any accountant.
- (2) If--
 - (A) any summons is served on any person who is a third-party recordkeeper; and
 - (B) the summons requires the production of, or the giving of testimony relating to, any portion of records made or kept of the transactions described in section 508 (19 USC 1508) of any person (other than the person summoned) who is identified in the description of the records contained in such summons; then notice of such summons shall be given to any persons so identified within a reasonable time before the day fixed in the summons as the day upon which such records are to be examined or testimony given. Such notice shall be accompanied by a copy of the summons which has been served and shall contain directions for staying compliance with the summons under paragraph (5)(B) of this subsection.
- (3) Any notice required under paragraph (2) of this subsection shall be sufficient if such notice is served in the manner provided in subsection (b) of this section upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person.
- (4) Paragraph (2) of this subsection shall not apply to any summons--
 - (A) served on the person with respect to whose liability for duties, fees, or taxes the summons is issued, or any officer or employee of such person; or
 - (B) to determine whether or not records of the transactions described in section 508 (19 USC 1508) of an identified person have been made or kept.
- (5) Notwithstanding any other law or rule of law, any person who is entitled to

notice of a summons under paragraph (2) of this subsection shall have the right--

- (A) to intervene in any proceeding with respect to the enforcement of such summons under section 510 of this Act (19 USC 1510); and
 - (B) to stay compliance with the summons if, not later than the day before the day fixed in the summons as the day upon which the records are to be examined or testimony given--
 - (i) notice in writing is given to the person summoned not to comply with the summons; and
 - (ii) copy of such notice not to comply with the summons is mailed by registered or certified mail to such person and to such office as the Secretary may direct in the notice referred to in paragraph (2) of this subsection.
- (6) No examination of any records required to be produced under a summons as to which notice is required under paragraph (2) of this subsection may be made--
- (A) before the expiration of the period allowed for the notice not to comply under paragraph (5)(B) of this subsection, or
 - (B) if the requirements of such paragraph (5)(B) have been met, except in accordance with an order issued by a court of competent jurisdiction authorizing examination of such records or with the consent of the person staying compliance.
- (7) The provisions of paragraphs (2) and (5) of this subsection shall not apply with respect to any summons if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(e) List of Records and Information. The Customs Service shall identify and publish a list of the records or entry information that is required to be maintained and produced under subsection (a)(1)(A).

(f) Recordkeeping Compliance Program.--

- (1) In general. After consultation with the importing community, the Customs Service shall by regulation establish a recordkeeping compliance program which the parties listed in section 508(a) (19 USC 1508 (a)) may participate in after being certified by the Customs Service under paragraph (2). Participation in the recordkeeping compliance program by recordkeepers is voluntary.
- (2) Certification. A recordkeeper may be certified as a participant in the recordkeeping compliance program after meeting the general recordkeeping requirements established under the program or after negotiating an alternative program suited to the needs of the recordkeeper and the Customs Service. Certification requirements shall take into account the size and nature of the importing business and the volume of imports. In order to be certified, the recordkeeper must be able to demonstrate that it--
 - (A) understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods involved;
 - (B) has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production of required records;
 - (C) has in place procedures regarding the preparation and maintenance of required records, and the production of such records to the Customs Service;
 - (D) has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of the Customs Service;
 - (E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternative records or recordkeeping formats other than the original records; and
 - (F) has procedures for notifying the Customs Service of occurrences of variances to, and violations of, the requirements of the recordkeeping compliance program or the negotiated alternative programs, and for taking corrective action when notified by the

Customs Service of violations or problems regarding such program.

(g) Penalties.--

- (1) Definition. For purposes of this subsection, the term 'information' means any record, statement, declaration, document, or electronically stored or transmitted information or data referred to in subsection (a)(1)(A).
- (2) Effects of failure to comply with demand. Except as provided in paragraph (4), if a person fails to comply with a lawful demand for information under subsection (a)(1)(A) the following provisions apply:
 - (A) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed \$100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less.
 - (B) If the failure to comply is a result of the negligence of the person in maintaining, storing, or retrieving the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed \$10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.
 - (C) In addition to any penalty imposed under subparagraph (A) or (B) regarding demanded information, if such information related to the eligibility of merchandise for a column 1 special rate of duty under title I, the entry of such merchandise--
 - (i) if unliquidated, shall be liquidated at the applicable column 1 general rate of duty; or
 - (ii) if liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in section 514 or 520 (19 USC 1514 or 1520), at the applicable column 1 general rate of duty; except that any liquidation or reliquidation under clause (i) or (ii) shall be at the applicable column 2 rate of duty if the Customs Service demonstrates that the merchandise should be dutiable at such rate.

- (3) Avoidance of penalty. No penalty may be assessed under this subsection if the person can show--
 - (A) that the loss of the demanded information was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;
 - (B) on the basis of other evidence satisfactory to the Customs Service, that the demand was substantially complied with; or
 - (C) the information demanded was presented to and retained by the Customs Service at the time of entry or submitted in response to an earlier demand.
- (4) Penalties not exclusive. Any penalty imposed under this subsection shall be in addition to any other penalty provided by law except for--
 - (A) a penalty imposed under section 592 (19 USC 1592) for a material omission of the demanded information, or
 - (B) disciplinary action taken under section 641 (19 USC 1641).
- (5) Remission or mitigation. A penalty imposed under this section may be remitted or mitigated under section 618 (19 USC 1618).
- (6) Customs summons. Nothing in this subsection shall limit or preclude the Customs Service from issuing, or seeking the enforcement of, a customs summons.
- (7) Alternatives to penalties.--
 - (A) In general. When a recordkeeper who--
 - (i) has been certified as a participant in the recordkeeping compliance program under subsection (f); and
 - (ii) is generally in compliance with the appropriate procedures and requirements of the program; does not produce a demanded record or information for a specific release or provide the information by acceptable alternative means, the Customs Service, in the absence of willfulness or repeated violations, shall issue a written notice of the violation to the recordkeeper in lieu of a

monetary penalty. Repeated violations by the recordkeeper may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

- (B) Contents of notice. A notice of violation issued under subparagraph (A) shall--
 - (i) state that the recordkeeper has violated the recordkeeping requirements;
 - (ii) indicate the record or information which was demanded; and
 - (iii) warn the recordkeeper that future failures to produce demanded records or information may result in the imposition of monetary penalties.
- (C) Response to notice. Within a reasonable time after receiving written notice under subparagraph (A), the recordkeeper shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.
- (D) Regulations. The Secretary shall promulgate regulations to implement this paragraph. Such regulations may specify the time periods for compliance with a demand for information and provide guidelines which define repeated violations for purposes of this paragraph. Any penalty issued for a recordkeeping violation shall take into account the degree of compliance compared to the total number of importations, the nature of the demanded records and the recordkeeper's cooperation.

19 USC 1510 Judicial enforcement.

- (a) **Order of court.** If any person summoned under section 509 of this Act (19 USC 1509) does not comply with the summons, the district court of the United States for any district in which such person is found or resides or is doing business, upon application and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to comply with the summons. Failure to obey such order of the court may be punished by such court as a contempt thereof and such court may assess a monetary penalty.

(b) Sanctions.

- (1) For so long as any person, after being adjudged guilty of contempt for neglecting or refusing to obey a lawful summons issued under section 509 of this Act (19 USC 1509) and for refusing to obey the order of the court, remains in contempt, the Secretary may--
 - (A) prohibit that person from importing merchandise into the customs territory of the United States directly or indirectly or for his account, and
 - (B) instruct the appropriate customs officers to withhold delivery of merchandise imported directly or indirectly by that person or for his account.
- (2) If any person remains in contempt for more than one year after the date on which the Secretary issues instructions under paragraph (1)(B) with respect to that person, the appropriate customs officers shall cause all merchandise held in customs custody pursuant to such instructions to be sold at public auction or otherwise disposed of under the customs laws.
- (3) The sanctions which may be imposed under paragraphs (1) and (2) are in addition to any punishment which may be imposed by the court for contempt.

SPECIFIC AUTHORITY

Customs Regulations: §163.2 Persons required to maintain records

(a) General. Except as otherwise provided in paragraph (b) and (e) of this section, the following persons shall maintain records and shall render such records for examination and inspection by Customs.

- (1) An owner, importer, consignee, importer of record, entry filer, or other person who:
 - (i) Imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or
 - (ii) Knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;
- (2) An agent of any person described in paragraph (a)(1) of this section; or
- (3) A person whose activities require the filing of a declaration or entry, or both.

(b) Domestic transaction. For purposes of paragraph (a)(1) of this section, a person who orders merchandise from an importer in a domestic transaction knowingly causes merchandise to be imported only if:

- (1) The terms and conditions of the importation are controlled by the person placing the order with the importer (for example, the importer is not an independent contractor but rather is the agent of the person placing the order: Whereas a consumer who purchases an imported automobile from a domestic dealer would not be required to maintain records, a transit authority that prepared detailed specification from which imported subway cars or busses were manufactured would be required to maintain records); or
- (2) Technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with the importer with knowledge that they will be used in the manufacture or production of the imported merchandise.

Customs Regulations: §163.4 Record retention period

(a) General. Except as otherwise provided in paragraph (b) of this section, any record required to be made, kept, and rendered for examination and inspection by Customs under § 163.2 or any other provision of this chapter shall be kept for 5 years from the date of entry, if the record relates to an entry, or 5 years from the date of the activity which required creation of the record.

(b) Exceptions.

- (1) Any record relating to a drawback claim shall be kept until the third anniversary of the date of payment of the claim.
- (2) Packing lists shall be retained for a period of 60 calendar days from the end of the release or conditional release period, whichever is later, or, if a demand for return to Customs custody has been issued, for a period of 60 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place.
- (3) A consignee who is not the owner or purchaser and who appoints a customs broker shall keep a record pertaining to merchandise covered by an informal entry for 2 years from the date of the informal entry.
- (4) Records pertaining to articles that are admitted free of duty and tax pursuant to 19 U.S.C. 1321(a)(2) and §§ 10.151 through 10.153 of this chapter, and carriers' records pertaining to manifested cargo that is exempt from entry under the provisions of this chapter, shall be kept for 2 years from the date of the entry or other activity which required creation of the record.
- (5) If another provision of this chapter sets forth a retention period for a specific type of record that differs from the period that would apply under this section, that other provision controls.

Customs Regulations: §163.6 Production and examination of entry and other records and witnesses; penalties

- (a) Production of entry records.** Pursuant to written, oral, or electronic notice, any Customs officer may require the production of entry records by any person listed in § 163.2(a) who is required under this part to maintain such records, even if the entry records were required at the time of entry. Any oral demand for entry records shall be followed by

a written or electronic demand. The entry records shall be produced within 30 calendar days of receipt of the demand or within any shorter period as Customs may prescribe when the entry records are required in connection with a determination regarding the admissibility or release of merchandise. Should any person from whom Customs has demanded entry records encounter a problem in timely complying with the demand, such person may submit a written or electronic request to Customs for approval of a specific additional period of time in which to produce the records; the request must be received by Customs before the applicable due date for production of the records and must include an explanation of the circumstances giving rise to the request. Customs will promptly advise the requesting person electronically or in writing either that the request is denied or that the requested additional time period, or such shorter period as Customs may deem appropriate, is approved. The mere fact that a request for additional time to produce demanded entry records was submitted under this section shall not by itself preclude the imposition of a monetary penalty or other sanction under this part for failure to timely produce the records, but no such penalty or other sanction will be imposed if the request is approved and the records are produced before expiration of that additional period of time.

(b) Failure to produce entry records-

- (1) Monetary penalties applicable. The following penalties may be imposed if a person fails to comply with a lawful demand for the production of an entry record and is not excused from a penalty pursuant to paragraph (b)(3) of this section:
 - (i) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded record, such person shall be subject to a penalty, for each release of merchandise, not to exceed \$100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less; or
 - (ii) If the failure to comply is a result of negligence of the person in maintaining, storing, or retrieving the demanded record, such person shall be subject to a penalty, for each release of merchandise, not to exceed \$10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.
- (2) Additional actions-
 - (i) General. In addition to any penalty imposed under paragraph (b)(1) of this section, and except as otherwise

provided in paragraph (b)(2)(ii) of this section, if the demanded entry record relates to the eligibility of merchandise for a column 1 special rate of duty in the Harmonized Tariff Schedule of the United States (HTSUS), the entry of such merchandise:

- (A) If unliquidated, shall be liquidated, shall be liquidated at the applicable HTSUS column 1 general rate of duty; or
- (B) If liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in 19 U.S.C. 1514 or 1520, at the applicable HTSUS column 1 general rate of duty.

(ii) Exception. Any liquidation or reliquidation under paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this section shall be at the applicable HTSUS column 2 rate of duty if Customs demonstrates that the merchandise should be dutiable at such rate.

(3) Avoidance of penalties.

No penalty may be assessed under paragraph (b)(1) of this section if the person who fails to comply with a lawful demand for entry records can show:

- (i) That the loss of the demanded record was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;
- (ii) On the basis of other evidence satisfactory to Customs, that the demand was substantially complied with;
- (iii) That the record demanded was presented to and retained by Customs at the time of entry or submitted in response to an earlier demand; or
- (iii) That he has been certified as a participant in the Recordkeeping Compliance Program (see § 163.12), that he is generally in compliance with the

appropriate procedures and requirements of that program, and that the violation in question is his first violation and was a non-willful violation.

- (4) Penalties not exclusive. Any penalty imposed under paragraph (b)(1) of this section shall be in addition to any other penalty provided by law except for:
 - (i) A penalty imposed under 19 U.S.C. 1592 for a material omission of any information contained in the demanded record; or
 - (ii) Disciplinary action taken under 19 U.S.C. 1641.
- (5) Remission or mitigation of penalties. A penalty imposed under this section may be remitted or mitigated under 19 U.S.C. 1618.
- (6) Customs summons. The assessment of a penalty under this section shall not limit or preclude the issuance or enforcement of a summons under this part.

(c) Examination of entry and other records-

- (1) Reasons for examination. Customs may initiate an investigation or compliance assessment, audit or other inquiry for the purpose of;
 - (i) Ascertaining the correctness of any entry, determining the liability of any person for duties, taxes and fees due or duties, taxes and fees which may be due, or determining the liability of any person for fines, penalties and forfeitures; or
 - (ii) Ensuring compliance with the laws and regulations administered or enforced by Customs.
- (2) Availability of records. During the course of any investigation or compliance assessment, audit or other inquiry, any customs officer, during normal business hours, and to the extent possible at the time mutually convenient to the parties, may examine, or cause to be examined, any relevant entry or other records by providing the person responsible for such records with reasonable written, oral or electronic notice that describes the records with reasonable specificity. The examination of entry records shall be subject to the notice and production procedures set forth in paragraph (a) of this section, and a failure to produce entry records may result in the

imposition of penalties or the taking of other action as provided in paragraph (b) of this section.

- (3) Examination notice not exclusive. In addition to, or in lieu of, issuance of an examination notice under paragraph (c)(2) of this section, Customs may issue a summons pursuant to § 163.7, and seek its enforcement pursuant to §§ 163.9 and 163.10, to compel the production of any records required to be maintained and produced under this chapter.

Customs Regulations: §163.7 Summons

(a) Who may be served. During the course of any investigation or compliance assessment, audit or other inquiry initiated for the reasons set forth in § 163.6(c), the Commissioner of Customs or his designee, but no designee of the Commissioner below the rank of port director, field director of regulatory audit or special agent in charge, may issue a summons requiring a person within a reasonable period of time to appear before the appropriate Customs officer and to produce records or give relevant testimony under oath or both. Such a summons may be issued to any person who:

- (1) Imported, or knowingly caused to be imported, merchandise into the customs territory of the United States;
- (2) Exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country as defined in 19 U.S.C. 3301(4) (see also part 181 of this chapter) or to Canada during such time as the United States-Canada Free Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada;
- (3) Transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage;
- (4) Filed a declaration, entry, or drawback claim with Customs;
- (5) Is an officer, employee, or agent of any person described in paragraph (a)(1) through (a)(4) of this section;
- (6) Has possession, custody or care of records relating to an importation or other activity described in paragraph (a)(1) through (a)(4) of this section; or
- (7) Customs may deem proper.

Customs Regulations: §163.9 Enforcement of Summons

Whenever a person does not comply with a Customs summons, the issuing officer may request the appropriate U.S. attorney to seek an order requiring compliance from the

U.S. district court for the district in which the person is found or resides or is doing business. A person who is entitled to notice under § 163.8(a) shall have a right to intervene in any such enforcement proceeding.

CHIEF COUNSEL OPINION ON EXAMINATION OF RECORDS

In Memorandum dated December 16, 1980 from Regional Counsel of Customs to the Director of Regulatory Audit, the Regional Counsel expressed the opinion that:

“..If an importer refuses to consent to a search of his records at his premises, a summons may be served upon him directing him to do so. 19 U.S.C. 1510 provides for judicial enforcement of summonses served pursuant to 1509.

Melvyn H. Greenberg”